



NYLS Journal of Human Rights

Volume 11

Issue 3 *CHALLENGES IN IMMIGRATION LAW
AND POLICY: AN AGENDA FOR THE TWENTY-
FIRST CENTURY*

Article 5

Spring 1994

PANEL TWO: IMMIGRATION AND DIVERSITY

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(1994) "PANEL TWO: IMMIGRATION AND DIVERSITY," *NYLS Journal of Human Rights*: Vol. 11 : Iss. 3 , Article 5.

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PANEL TWO: IMMIGRATION AND DIVERSITY

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BUCKLER: This afternoon our first panel will look at issues of immigration and diversity. I'm very pleased to introduce our moderator, Lenni Benson, who is an experienced immigration practitioner and a well known commentator on legislation and regulations involving immigration. She will also be joining us here at New York Law School as a professor of immigration law. So I'll hand it over to Lenni.

LENNI B. BENSON: Good afternoon. In his opening remarks, Arthur Helton promised you a bit of a fistfight. We're going to do our best to live up to that expectation. Our presentations will be rather short, and after the presentations, I have prepared a number of discussion topics which I think will explore the issue of diversity in immigration. Then the fight can begin.

Before I introduce the first speaker, I want you all to think for a second about the term "diversity." I would suggest that although we might think it means representation of different groups, until you have information and historical context, you might make wrong assumptions about something being diverse. For example, looking at the panel, we see that there is a woman on the panel, and we might

think, "Oh good, it is a diverse panel." But if you knew that more than fifty percent of the practicing immigration bar who are active members of the American Immigration Lawyers Association are women, and that there is a high percentage of women who teach immigration law, you might think the panel was not diverse because of the statistical under-representation of women in this field.

This question of diversity is a difficult one to explore unless you have a history. And history will be part of the opening remarks of Dan Stein, director of FAIR, the Federation of American Immigration Reform. FAIR is a lobbying and educational organization which has a stated goal of limiting immigration to the United States.

DANIEL A. STEIN: Thank you. I am very happy to be here. I appreciate the invitation and the opportunity to talk about what is a very interesting issue—diversity and its role in United States immigration policy. I would like to begin by speaking about the question of diversity, and the continuum of the loyalty concept as it relates to national origins and national interests in the selection of immigrants.

A biblical philosopher once said: "If I am not for myself who is for me; and being for my own self what am I?"¹ That famous quote really lays out the full continuum of the relationship between loyalty to one's own interests and the ethical commitment to help others—from the paradigm of utopian universalism or globalism, all the way to the opposite extreme of exclusive individualism and egoism.²

At the most basic level, each of us, of course, has an obligation to ourselves as individuals to ensure our own perpetuation. If we are for ourselves only, we call that egoism. We clearly have obligations up the next rung of the loyalty ladder to our family and sometimes to our friends. We call that familialism and chronymism, respectively.

Beyond this, we still find in many countries the emergence of

¹ This quote is attributed to Hillel the Elder. SAYINGS OF THE JEWISH FATHERS 15 (C. Taylor ed., 1877), reprinted in OXFORD DICTIONARY OF QUOTATIONS 251 (3d ed. 1979).

² See GARRETT HARDIN, *LIVING WITHIN LIMITS* 233 (1993).

blatant tribalism, and in its more glorified and institutional form, we call this nationalism. From there we move to the utopian concept of being loyal to the world itself, which we call universalism. To the extent that human nature operates as it was originally constituted, the power of loyalty declines as we move farther up the scale toward universal globalism.

The United States, from its original colonial period, 1607 up to about 1880, had an immigration policy which, expressly or by inference, selected northern European immigrants. The colonial immigration policies in particular—and we see this in the Declaration of Independence and certainly up through the development of the initial immigration restrictions at the turn of this century—were primarily designed to populate a country; to move people across the land. This land, after all, at one time was property of the various American Indian tribes. Later there was something called New Amsterdam. Why it is no longer New Amsterdam and why the center of the country is no longer considered New France; why Spain no longer holds claim to the territory farthest west relates to the establishment of jurisdiction and power across a wilderness, which immigration, highly selective, was designed to achieve in the early parts of our national history.

In 1924, Congress put in place institutional immigration restrictions, which we call the National Origins Quota System, which were designed to reinforce the national origins stock as they existed in the census of 1890. That law, which remained on the books through 1965, sought to perpetuate the dominance of northern Europeans as the primary immigrant pool.³

In 1965, Congress changed the law with the Immigration Amendments of 1965.⁴ This law, which was passed at the heyday of the Great Society, was designed facially not to increase the number of immigrants, but to give people who had been historically excluded by the 1924 Act an opportunity to immigrate. Politically, however,

³ See Bill O. Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863, 918 (1993) (defining the 1924 National Origins Quota and setting forth some of the limits by geographical origin).

⁴ Immigration and Nationality Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified in scattered sections of 8 U.S.C. (1988)).

the major purpose of the law was to try to provide new immigration opportunities for Irish and Italians, two groups in this country who felt that they had been wrongfully excluded by the 1924 law.

The way the 1965 laws have operated, in fact, have not necessarily been to increase diversity. To the extent that the process put in place in 1965 gave priority to family preference as the principle selection criteria for immigrants, about eighty percent of the immigrants who now come through our normal immigration channels come as a result of having a family relative already in this country.⁵ Therefore, not surprisingly, the vast majority of those who come legally as immigrants come from only a handful of countries such as the Philippines, Mexico, Korea, Vietnam, the Dominican Republic, Haiti, El Salvador, India, China, and a handful of others.⁶ To the extent that the priority put in place in 1965 overwhelmingly emphasized family relationships, it is arguable that the 1965 law, just as the 1924 law, are both operating against, in the long run, a truly diverse immigration flow.⁷

What ultimately can be the role of ensuring diversity in the immigration flow, and how does that objective of achieving diversity in the immigration flow mesh with the goal of achieving a diverse society in the United States today? Well, first I would like to deal with the question of whether diversity is per se an abstract goal that can be achieved through immigration policy.

In this regard, the first question must be how diversity is defined. Who does it, and why do they do it? I'm on the Census Advisory Task Force for the Census 2000, and we spend an awful lot of our time talking about how we are going to define ethnicity and race on the census forms. And believe me, there is no issue which is more political, and in which the stakeholders around the table have more to say than the question of how groups categorize themselves and how people categorize one another. It leaves me with the impression that diversity has become a flexible, self-described

⁵ See Hing, *supra* note 3, at 918.

⁶ IMMIGRATION & NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1992 30-31 (1993) [hereinafter STATISTICAL YEARBOOK].

⁷ See Peter Brimelow, *Time to Rethink Immigration?*, NAT'L REV., June 22, 1992, at 30.

concept used for political purposes, and wondering who it is that is going to be the person or the power in the society that defines diversity. I am also wondering when one group's characteristics constitute a diverse accession to the society and another group's characteristics do not. Who decides? After all, before the heyday of the politically correct, many of us who now fall under the rubric of white or caucasian used to be considered Irish, Ukrainian, Jewish, or Italian. Today, in the sensitive days of political correctness, we're all considered "anglo." Now, I don't consider myself anglo. I don't have anything to do with being anglo. It's like calling everyone from the continent of Asia a Chinaman. It is a very, very broad brush that simply gives no fair representation of differing national origins.

So who decides what diversity is and what diversity isn't? And who decides where that decision-making power is lodged? Assuming we can decide on diversity as a legitimate goal, what criteria do we use to establish when we have achieved the requisite diversity as a nation? Where is that power lodged? And when do we know that we have achieved the appropriate diversity quotient in accordance with that pre-established pattern? Can a perfect diversity equilibrium actually be maintained? Once you achieve it, can it be stopped like a snapshot in time?

There are some commentators who say that the diversity quotient should be equal to that which is found globally and that the United States does not demographically have legitimacy as a sovereign state until such time as the national origins diversity in the country equals the global figure. Well, that may be one measure. But assuming you accept that as true, how could you realistically achieve that through any workable immigration law? And once you achieve that number and that diversity quotient, how would you then freeze it and put it into place? Well, there are others who say, "Dan, don't bother me with all these niceties—these mathematical, geographic, and geometrical abstractions—we just shouldn't have any borders at all. We can achieve diversity by simply not having immigration laws." Now, there are, to be sure, not many Americans who feel that way, but there are a few.⁸ But assuming we did have

⁸ Notably, in a 1984 editorial, the *Wall Street Journal* advocated the abolition of immigration laws: "If Washington still wants to do something about immigration, we propose a five-word amendment: There shall be open borders." *In Praise of Huddled*

a world without borders, a global village where people were free to go where they want, the question becomes whether in the long run that would actually achieve diversity.

One of the things that I used to like about traveling was that when you went to another country, you would find that there was variety, in among other things, cuisine and culture. In fact, it wasn't that long ago in this country where you could do a fair amount of traveling, and you would find that there was regional and cultural diversity wherever you went. Well, today in the United States, you don't have to go very far without running into a McDonald's, and this is becoming true worldwide as well. If you have a truly global society and people can go wherever they want, would you in the long run truly have diversity, or would every place you go seem just like the other? It may well be that the only way you can maintain global diversity is through the existence of national boundaries. And the ethic of national boundaries is still a workable construct because nations still do business between one another in this way. It appears that national boundaries are the essence of the maintenance of true diversity. It is not clear whether any of these considerations animate the thinking of our politicians. Based on the way in which the immigration laws have operated to date, a number of laws have passed through Congress which appear to be under the rubric of promoting diversity,⁹ but which frankly are nothing more than special interest legislation designed to try to accommodate special groups that have high power lobbyists.

The bottom line, in conclusion, really is that it isn't possible to try to achieve any nationally recognized concept of diversity as an overall immigration law priority, and that when people use the concept of diversity and the promotion of immigration law changes, they are probably doing so for reasons that have more to do with self-serving special interests than any other more broadly articulated policy.

Masses, WALL ST. J., July 3, 1984, at 24; see R. George Wright, *Federal Immigration Law and the Case for Open Entry*, 27 LOY. L.A. L. REV. 1265 (1994) (arguing that an open entry policy is desirable, and that it would not be overly costly).

⁹ E.g., Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C. (Supp. IV 1992)).

BENSON: When you first look at some of the concepts of diversity, you may be thinking about our statutes and our categories of who we admit and who we do not. But in reality, diversity is also the way in which we apply our law. I think our next speaker, Jocelyn McCalla, who works with Haitian refugees and is the executive director of the National Coalition for Haitian Refugees may address diversity in this context.

JOCELYN McCALLA: In preparing for this presentation today, I wondered why I was assigned to this panel instead of the morning panel which dealt more with refugees than with the question of diversity and immigration. In reflection upon it, I thought of a couple of things. First, by giving me something to think about, perhaps Arthur Helton and the others who created this panel basically wanted to give me a break from the deep frustration that I have felt in dealing with the Bush and Clinton Administrations' policies towards Haitian refugees, and the fact that there appears to be a great deal of continuity since the interdiction agreement was established in 1981 by the Reagan administration.¹⁰ But then I thought about it again, and I realized that perhaps it was because my good friend Dan Stein was also going to be on the panel, and that that might provide us with a fun time. Dan and I have not spoken publicly since we were on a talk show together for about five minutes. I'm not sure who won that debate. Anyway, I hope that this panel will provide for a more sober, academic, and scholarly debate on the question of diversity in immigration. The issue then is how can policy toward Haitian refugees shed light upon the challenges that are going to bring us to the next century.

I contend that the United States has used measures absolutely disproportionate to the problem of Haitian refugees and Haitian immigration to the United States. Over the years we have witnessed these measures applied to other groups of refugees. Interdiction and repatriation have had repercussions throughout the world. Measures adopted by the United States are liable to be replicated elsewhere. Given that the United States now has a monopoly on the world's leadership, it has a significant burden in this regard.

¹⁰ United States-Haiti Interdiction Agreement, Sept. 23, 1981, U.S.-Haiti, T.I.A.S. No. 10,241.

I will also say that, in the current restrictionist environment, our response to the Haitian refugee crisis also defines our response to the whole question of immigration. It defines the kinds of relationships that Americans of all ethnic backgrounds and nationalities have dealt with within the borders of this country. I contend further that there will be more diversity, not less, if measures to empower rather than ignore or abuse immigrant communities in the United States are taken.

Now, let me step back and explain why measures against Haitian refugees have been disproportionate to the problem they pose. Haitian refugee flight began in the 1960s, during the time of François "Papa Doc" Duvalier, who used the most violent political and armed measures to suppress dissent and exterminate his opponents.¹¹ But at that time the Haitian refugees were not reaching the United States by boat. The Haitian refugees then were professionals; educated members of the middle class.¹² Their immigration to the United States proceeded rather smoothly. They not only emigrated to the United States, but also to France, Canada, and under the umbrella of the United Nations, earned gainful employment as the black technocrats in the newly independent former African colonies of France and Belgium.¹³

After the 1960s, clearly the cream of the crop in Haiti was readily absorbed abroad. There was no problem with Haitian immigration then. In Haiti, Duvalier said, "Thank God, they're out. They're not in my hair." In the United States and elsewhere, people also said, "Thank God for these brave new workers who are not afraid to break their backs on the job." Besides, they spoke French.

A change in United States policy towards Haitian refugees occurred when Haitians began to wash ashore in southern Florida. While a little compassion existed, there were disproportionate

¹¹ See *World Jurist Commission Denounces Haiti's President*, N.Y. TIMES, Sept. 6, 1967, at A22; *Iron Hand in Haiti—Dr. Francois Duvalier*, N.Y. TIMES, Aug. 4, 1967, at A6.

¹² Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. SCH. J. HUM. RTS. 269, 270 n.4 (1993).

¹³ For a general discussion of immigrants working as technocrats in newly independent former African colonies during this period, see Charles Mohr, *For Black Africa, Who Is Getting the Good Jobs Remains a Painful Question*, N.Y. TIMES, Nov. 28, 1971, at A14.

responses to a problem that now occupies center stage in international refugee policy. Against Haitian refugees, the Immigration and Naturalization Service applied an accelerated asylum screening process that resulted in virtually no applicant being granted asylum.¹⁴ After years of lengthy detention of Haitians who showed up in Florida, the INS decided in 1978 to establish what they called the Haitian Program, the goal of which was to expel Haitian asylum applicants as rapidly as possible.¹⁵ The Haitian Program was later applied against El Salvadorans and other refugees coming across the border.¹⁶ Political and human rights were obstructed during this time—these refugees were compelled to risk everything for safety abroad. A court ruling in 1980 ended the Haitian Program,¹⁷ but not before countless hours of testimony had established, without a doubt, that the State Department and the INS completely ignored the evidence of political persecution in Haiti because, among other things, it was determined that Haitians threatened the well-being of America.

The whole discussion of diversity revolves around the question of whether there is a threat, and if one exists, what it is and where it is coming from. Equity and fairness did not figure in the calculations of the government bureaucracies called upon to deal with the Haitians. Neither was there recognition that the United States Agency for International Development had identified them as among the most skilled and versatile workers in the Caribbean who had valuable contributions to make to the American mainstream. Instead, fear of black Haitians prevailed. They were alleged to be experts in black magic. They also spoke in forked tongues, peculiar even to

¹⁴ See Ellen B. Gwynn, *Immigration Law—Race and National Origin Discrimination and the Haitian Detainees*—Jean v. Nelson, 105 S. Ct. 2992 (1985), 14 FLA. ST. U. L. REV. 333, 341-42 n.53 (1986).

¹⁵ See Joyce A. Hughes & Linda R. Crane, *Haitians: Seeking Refuge in the United States*, 7 GEO. IMMIGR. L.J. 747 (1993); David E. Ralph, Note & Comment, *Haitian Interdiction on the High Seas: The Continuing Saga of the Rights of Aliens Outside United States Territory*, 17 MD. J. INT'L L. & TRADE 227 (1993).

¹⁶ See Ari Weitzchandler, *Temporary Protected Status: The Congressional Response to the Plight of El Salvadoran Aliens*, 64 U. COLO. L. REV. 249, 251 (1993); Orantes-Hernandez v. Meese, 685 F. Supp. 1488 (C.D. Cal. 1988).

¹⁷ Haitian Refugee Ctr. v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), modified sub nom. Haitian Refugee Ctr. v. Smith, 676 F.2d 1023 (5th Cir. Unit B 1982).

black people. It was feared that these newcomers would overwhelm the communities of Fort Lauderdale, Palm Beach, and, God forbid, Georgetown.

With the end of the Haitian Program in 1980, the United States' response got even worse. In 1981, the Reagan administration established the interdiction policy. From 1982 to September 1991, the United States spent approximately thirty million dollars a year on coast guard patrols off Haiti, intercepting and repatriating Haitian refugees.¹⁸ The cost per Haitian intercepted and repatriated is estimated to be between \$9,000 and \$10,000 per person.¹⁹ Following the arrest of President Aristide, Haitians began to flee by the tens of thousands.²⁰ The cost of this repatriation and interdiction policy grew exponentially. In May 1992, President Bush decided to use strong-arm measures to deal with seafaring Haitian refugees. By issuing the "Kennebunkport Order," Bush erased all pretense of fairness and equity in refugee protection.²¹ There again, fear instead of rational thinking prevailed.

This is a brief history, and I do not have the time to go into a lot of details about what the government has done to shape public perception of Haitians in the United States. If we are to learn something from this experience, however, it should be that the

¹⁸ See Lizette Alvarez, *Interdiction Driven by Race or Safety? Practice Has Halted Since Coup*, MIAMI HERALD, Oct. 26, 1991, at A20.

¹⁹ See U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 42 (1993) (stating that 24,000 Haitians were forcibly repatriated during the 1980s); Liz Balmaseda, *U.S. Interdiction Efforts Can't Close Haitian Highway*, MIAMI HERALD, Oct. 29, 1984, at A1 (stating that Haitians forcibly repatriated at a cost of \$22,000,000 per year); Thomas W. Lippman, *Pentagon Method of Calculation Minimizes Cost of Haiti Operation*, WASH. POST, Sept. 17, 1994, at A10 (stating that \$250,000,000 was spent, in total, on forced repatriation of Haitians).

²⁰ See Steven Forester, *Haitian Asylum Advocacy: Questions to Ask Applicants and Notes on Interviewing and Representation*, 10 N.Y.L. SCH. J. HUM. RTS. 351, 351 (1993); Terry Atlas, *Haiti Boat People to be Put in Camps—U.S. Shuts the Door For Now; More Marines Sent Off Shore*, CHI. TRIB., July 6, 1994, at 1; *U.S. Draws Miami Protests on Treatment of Haitians*, PHILA. INQUIRER, Feb. 8, 1993, at A4.

²¹ Exec. Order No. 12,807, 57 Fed. Reg. 23,133 (1992). The Order directed the INS to repatriate Haitian refugees interdicted at sea "without any investigation into the likelihood of their persecution in Haiti." Little, *supra* note 12, at 303. The Supreme Court upheld the Order. *Sale v. Haitian Ctrs. Council, Inc.*, 113 S. Ct. 2549, 2567 (1993).

economic and social growth of the United States is not going to benefit from immigration or refugee policies that are based on fear. Fear is not what built this country. It was the challenge of extending freedom—extending what is now called the American dream—that built this country. Therefore, fear of people who are different from us, whether they be Caucasian, Chinese, Asian, or other is not going to build this country.

Instead of building immigration policies modeled on the responses to Haitian immigration, we should try to find answers that uphold the basic rights of people to seek asylum in line with fair and equitable laws which do not discriminate against particular nationalities. And that's the real issue here—fairness and equity. If we are looking at what should be done with immigration, fairness and equity, in my opinion, should be the guiding principles.

Finally, finding good integration and interchange, cultural and otherwise, is a struggle. The wave of the future is not people living in isolation, it is people living more in harmony with each other. As for the Haitians, I believe they desire nothing more than to build a homeland where they can enjoy freedom in the relative comfort of their homes. Meanwhile, consider that we are your nightmare, but we are the best nightmare on earth. Haitians are here to stay, so you better get used to it.

BENSON: I mentioned earlier that to understand diversity, it is important to understand the history of immigration law. In a recent article, Stephen Legomsky, a professor of immigration law, talks about the new diversity lottery.²² You may have read about these programs. There have been a number of visa lotteries. The most recent one will begin officially in October of 1994.²³ Laws have recently been enacted authorizing 55,000 immigrant visas or "green cards."²⁴ Legomsky calls these "anti-diversity visas" because the visas are seeking to give an additional immigration avenue to

²² Stephen H. Legomsky, *Immigration, Equality and Diversity*, 31 COLUM. J. TRANSNAT'L L. 319 (1993).

²³ See 8 U.S.C. § 1153(c) (Supp. V 1993); Evelyn Hernandez, *The New New Yorkers Living in the USA—Costs of Immigration Rising*, NEWSDAY, July 18, 1994, at B7.

²⁴ 8 U.S.C. § 1151(e) (Supp. IV 1992).

Europeans and some Africans.²⁵ In reality, we have a long history of limiting immigration, and discrimination against Asians and people from countries in the Western Hemisphere.²⁶ The result is that the diversity program, which looks like it's actually giving new benefits to people who are disadvantaged, is actually returning to a preference for people of European origin, which was in the law before the 1964 Amendments.²⁷ The diversity visas actually bring less diverse peoples to the United States.²⁸

In his comments to us, Stan Mark is going to talk about the historical discrimination against Asian people in United States immigration policy. Stan is a lawyer and program director of the Asian American Legal Defense and Education Fund.

STANLEY MARK: A preliminary remark I would like to make is that for the Asian American community, particularly its advocates, immigration law and policy, along with the statistics on the rise of anti-Asian violence,²⁹ are measuring sticks of how well Asian Americans are doing in our society. In this context, I would like to bring out the issue of diversity for Asian Americans, which is a diverse group in itself. Asian Americans incorporate persons from more than twenty-two major nationalities, whose ancestry can be traced to immigrants from nations east of Afghanistan as well as to those who inhabit numerous Pacific islands. That is the definition adopted by the United States Commission on Civil Rights.³⁰

According to 1990 census data, there are 7,458,000 Asian Pacific American Islanders,³¹ out of a total United States population

²⁵ Legomsky, *supra* note 22, at 334.

²⁶ *Id.* at 326-27.

²⁷ *See id.* at 333.

²⁸ *Id.* at 334.

²⁹ *See* Indira A.R. Lakshmanan, *Hate-Crime Reports Rise in Boston*, BOSTON GLOBE, June 20, 1994, at 1. In fact, anti-Asian violence is not a new phenomenon and has existed since Asians began to arrive upon American shores. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1252-58 (1993).

³⁰ U.S. COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990s 1 nn.1, 4 (1992).

³¹ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1993 14 (113th ed. 1993) [hereinafter STATISTICAL ABSTRACT].

of 248,710,000.³² Therefore, Asian Pacific Islanders account for about three percent of the population. As small as this figure is when compared to other groups,³³ for some people, in particular policy makers and those in political leadership, this number may still mean that there are too many Asian Pacific American Islanders in the United States. Unfortunately this is not a new phenomenon, attitude, or position. It really reflects the history and legacy of anti-Asian sentiment that erupts during cycles of economic recession and depression. And it is this legacy which is part of our immigration laws today.

I would like to share with you some of the more outrageous discriminatory and exclusionary laws directed specifically against Asian Pacific American Islanders. In 1790, Congress passed a law restricting naturalization to "free white persons."³⁴ Upon the adoption of the Fourteenth Amendment in 1870, the right to naturalization expanded to include African Americans.³⁵ However, Congress refused to extend naturalization rights to Asians who became the only racial group excluded from obtaining citizenship. However, all persons born in the United States, that is American-born children of Asians, became citizens as of right under the Fourteenth Amendment. This citizenship principle was upheld in 1898 by the United States Supreme Court in *United States v. Wong Kim Ark*.³⁶ Although Filipinos, Chinese, and other Asians were extended the right to naturalize by the mid-1940s,³⁷ it was not until the McCarran-Walter Act of 1952³⁸ that the right to naturalization was extended to all races and ethnic groups, including persons of Japanese ancestry.

³² *Id.* at 8.

³³ For example, the number of resident Hispanics is 22,354,000, or nine percent of the resident U.S. population. *Id.*

³⁴ Act of March 26, 1790, ch. III, 1 Stat. 103 (repealed 1795).

³⁵ U.S. CONST. amend. XIV.

³⁶ 169 U.S. 649, 705 (1898).

³⁷ HYUNG-CHEN KIM, A LEGAL HISTORY OF ASIAN-AMERICANS, 1790-1990 141 (1994).

³⁸ The McCarran-Walter Act is the popular name for the Immigration and Nationality Act of 1952, Pub. L. No. 82-412, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C. (1988)).

During the 1850s, Chinese immigrants arrived on these shores to work in mines throughout the western states.³⁹ Subsequently they built the western branches of the transcontinental railroads.⁴⁰ But after the construction was completed in 1869, anti-Chinese sentiment grew as unemployment became more widespread.⁴¹ The fact that Chinese workers, known as coolie laborers, were paid lower wages created a movement to bar Chinese workers from entering the United States.⁴² This resulted in the enactment of the first of a series of exclusion acts directed against the Chinese first, but which eventually led to the barring of all Asians from entering the country with the enactment of the 1924 Immigration Act.⁴³

The legacy of the anti-Asian laws includes the Chinese Exclusion Act of 1882,⁴⁴ which was extended in 1904 for an indefinite period,⁴⁵ and the Geary Act of 1892.⁴⁶ In 1907, the Gentlemen's Agreement, signed by President Theodore Roosevelt, banned Japanese immigrants, but it did not bar the arrival of Japanese picture brides who came to raise families.⁴⁷ Unlike the Chinese, who were barred completely by the Chinese Exclusion Acts, including women, the Japanese American community continued to grow during that period, as the Chinese population actually declined.⁴⁸

The Immigration Act of 1917⁴⁹ barred immigration from all countries in the Asia-Pacific Triangle, except for the Philippines (a United States territory) and Japan. This was probably due to the

³⁹ KIM, *supra* note 37, at 47.

⁴⁰ MALDWYN A. JONES, AMERICAN IMMIGRATION 311 (Daniel J. Boorstin ed., 1960).

⁴¹ *Id.* at 248-49.

⁴² *Id.*

⁴³ Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (1924) (repealed 1952).

⁴⁴ Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882), *repealed by* Act of Dec. 17, 1943, Pub. L. No. 199, 57 Stat. 600 (1943).

⁴⁵ Act of Apr. 27, 1904, 33 Stat. 428 (1904) (repealed 1943).

⁴⁶ Geary Act, ch. 60, 27 Stat. 25 (1892) (repealed 1943).

⁴⁷ KIM, *supra* note 37, at 102-03.

⁴⁸ See BILL O. HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990 27-30 (1993).

⁴⁹ Immigration Act of 1917, ch. 29, 39 Stat. 874 (1917) (repealed 1952).

international situation—Japan was considered to be a world power at this point in history and used its influence as such to maintain the rights of its nationals to enter the United States. However, by 1924, immigration laws banned all Japanese from entering the United States because no one of Asian ancestry wishing to immigrate was eligible for citizenship. Bear in mind that until 1924, all Asians, except Japanese, were completely barred from entering the United States.

Meanwhile, immigrants from the Philippines continued to arrive until the enactment of the Tydings-McDuffie Act of 1933,⁵⁰ which bestowed commonwealth status on the Philippines, and transformed Philippine nationals into aliens.⁵¹ With the Philippines no longer a territory, the Act provided that Filipinos not born here were to immigrate to the United States at a rate of fifty persons per year.⁵²

It was not until 1943 that the Chinese Exclusion Act was finally repealed.⁵³ An annual quota of 105 persons per year was established.⁵⁴ Note that while these discriminatory and exclusionary immigration and naturalization laws were enforced, local governments, including most of the western states, adopted anti-alien laws, which were actually anti-Asian laws, that stripped Asians of what we would now call fundamental civil rights.⁵⁵ These anti-Asian laws and court decisions rivaled the South's black codes in their scope and the vehemence of their enforcement. Asians were legally barred from certain occupations,⁵⁶ from testifying against whites,⁵⁷

⁵⁰ Act of Jan. 17, 1933, Pub. L. No. 311, 47 Stat. 761 (1933).

⁵¹ *Id.* § 8(a)(1).

⁵² *Id.*

⁵³ Act of Dec. 17, 1943, Pub. L. No. 199, 57 Stat. 600 (1943). The Act was repealed by Congress "to remove the 'unconscionable stigma of lesser breed' that it cast on Chinese nationals for decades." K.G. Jan Pillai, *Affirmative Action: In Search of a National Policy*, 2 TEMP. POL. & CIV. RTS. L. REV. 1, 31 (1992) (quoting 90 CONG. REC. A1427 (Appendix Mar. 7, 1944) (statement of Rep. Celler)).

⁵⁴ See RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 378 (1990).

⁵⁵ For a history of anti-Asian sentiment given the sanction of law, see HING, *supra* note 48.

⁵⁶ See *id.* at 19 n.4.

from owning any land,⁵⁸ from marrying whites,⁵⁹ and from obtaining permits like fishing licenses necessary to make a living.⁶⁰ Asians were compelled to pay higher taxes—in some instances they were the only group to pay certain taxes.⁶¹ Additionally, they were segregated,⁶² and segregation as a policy was applied against Asians until the end of World War II. Taxes like mining taxes were also directed against Asians.⁶³

The point I am trying to make here is that historically, this legacy colors how Asian Americans see immigration law, civil rights, and the issue of diversity. We see these concepts as really access issues and opportunities for full participation and empowerment for our communities. Even today, this legacy still haunts us.

The passage of the Immigration Reform and Control Act of 1986 (IRCA),⁶⁴ with its employer sanctions, resulted in a widespread pattern of discrimination against Asians and Hispanics as reported by the General Accounting Office.⁶⁵ This discrimination was nineteen percent greater than what had already existed, and was caused by the employer sanction provisions of IRCA.⁶⁶

In the employment area, the passage of the Civil Rights Act

⁵⁷ See *People v. Hall*, 4 Cal. 399 (1854) (holding that testimony by a Chinese person was improperly admitted); SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 48 (1991) (discussing the California legislature's exclusion of testimony given by Chinese people in criminal and civil cases); Chang, *supra* note 29, at 1291.

⁵⁸ See HING, *supra* note 48, at 30.

⁵⁹ See *id.* at 45 (discussing anti-miscegenation laws in California and Oregon).

⁶⁰ Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 YALE L.J. 923, 947 n.106 (1988) (reviewing DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987)).

⁶¹ HING, *supra* note 48, at 17, 21.

⁶² *Id.* at 29 (discussing the segregation of Japanese in San Francisco educational facilities that resulted from anti-Asian rioting in the wake of the earthquake of 1906).

⁶³ *Id.* at 21.

⁶⁴ Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C. (1988 & Supp. V 1993)).

⁶⁵ GENERAL ACCOUNTING OFFICE, *IMMIGRATION REFORM: EMPLOYER SANCTIONS AND THE QUESTION OF DISCRIMINATION* 71 (GAO/GGD-90-62, Mar. 1990).

⁶⁶ *Id.* at 38; see Michael Crocenzi, Comment, *IRCA-Related Discrimination: Is It Time to Repeal the Employer Sanctions?*, 96 DICK. L. REV. 673, 684 (1992).

of 1991⁶⁷ was a major victory. However, this Act exempted one employer, Wards Cove Packing Co., from its coverage and barred 2,000 Filipino, Chinese, Japanese and native Alaskans from suing this cannery company for discriminatory practices, such as segregated housing facilities, segregated eating facilities, unequal pay, as well as a whole range of other discriminatory practices.⁶⁸ So I believe that the anti-Asian legacy continues today even in the Civil Rights Act of 1991.

In addition, since we're talking about diversity, there is the lottery provision that Lenni Benson mentioned earlier. If you look back at the lottery's legislative history, you will find congressional leaders stating that certain countries were "adversely affected" by the Immigration Act of 1965,⁶⁹ which removed national origin discrimination, or at least substantially removed discrimination from our immigration laws. However, most of us in the Asian American community find the position that the 1965 Act "adversely affected" certain countries to be very offensive. When we look at the term "adversely affected," it is a civil rights term for discrimination. I guess that the best analogy would be to look at the 1964 Civil Rights Act⁷⁰ and say that it "adversely affected" whites by creating reverse discrimination. That's how offensive it is to Asian Americans. The exclusionary laws and the National Origins Act⁷¹ initially excluded Asians and then allowed a very small number of Asians to come into the United States. This clearly constituted legally sanctioned discrimination against Asians. This legislative pattern continued until the passage of the 1965 Act. And then to say that the 1965 Act "adversely affected" European countries is really to invert history, turn it on its head, so to speak.

⁶⁷ Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in 42 U.S.C. § 1981 (Supp. IV 1992)).

⁶⁸ See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) (holding that statistical evidence showing a high percentage of Asian and Native Alaskans in cannery jobs and a low percentage of such workers in higher-paying, non-cannery positions did not establish a prima facie case of disparate impact in violation of Title VII).

⁶⁹ E.g., 134 CONG. REC. 9686 (1988) (statement of Rep. Mazzoli); 134 CONG. REC. 9689 (1988) (statement of Rep. Fish).

⁷⁰ Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended in scattered sections of 42 U.S.C. (1988)).

⁷¹ Immigration Act of 1924, Pub. L. No. 139, 43 Stat. 153 (1924) (repealed 1952).

So when we look at it from an Asian American perspective, we do not believe the 1965 Act "adversely affected" any country. It removed national origin discrimination and created a non-discriminatory system based on family reunification. We believe that this reform was a major step towards creating diversity by eliminating national origin discrimination from the law.

Today, the legacy of anti-Asian sentiment continues. This will continue to shape my view, as an Asian American, of immigration policy, and specifically, diversity as set forth in the Immigration Act of 1990.⁷²

Within a complex formula of defining out nations which send large numbers of immigrants from regions such as Asia, we eliminate many of the countries which regularly send these large numbers of immigrants through the family preference or through the employer-based system. Obviously, this does not increase diversity from Asian nations. But, by definition, the lottery is supposed to increase the diversity of the immigration flow from countries that were somehow "adversely affected" by the 1965 Act. This benefits primarily Europeans and Africans who do not have many family members here. They would now have access to some lottery visas. I, for one, am not opposed to having more visas for Africans, Irish, or other people from Europe, as long as it's not done at the expense of Asian Americans and immigrants from other parts of the world. Furthermore, I would say that we would like to see a better diversity program—fine-tune it, improve it, but expand the access to visas for other people currently excluded from the lottery.

In principle, the lottery is an attempt to allow people, who ordinarily would not have an avenue, to enter the United States. It is well-intentioned, but at the same time you have to look at the implications and the historical context of what this really means. The lottery actually denies access to diversity visas for a vast majority of people from Asia. Currently, if you looked at the formula for diversity in the Act, it provides for 55,000 annual visas.⁷³ Some authorities indicate that a maximum of 7,000 visas would be perhaps used by Asians from Japan, Indonesia and probably some smaller

⁷² Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified at scattered sections of 8 U.S.C. (Supp. IV 1992)).

⁷³ 8 U.S.C. § 1151(e) (Supp. II 1990).

Pacific Islands that send few immigrants to the United States.⁷⁴

The lottery's impact on diversity in the short term is not significant when you compare it to the number of people coming through the family or the employment-based systems. It's really insignificant. In the long term, it may have some positive benefits. With 6,000 people coming in now, perhaps in a generation or less, they will be able to reunite with their families here. A diversity lottery system extends the opportunity for people who would otherwise not have the chance to come here. Coupled with the family reunification preferences, in the long term it would extend for a very small number of people the possibility of coming here and reuniting with their families later.

I'd like to end my comments by raising a significant diversity issue. The proposed expansion of the Commission on Immigration Reform, which was mandated by the 1990 Immigration Act,⁷⁵ will have a larger impact on diversity than will the lottery. If our idea of diversity is to foster participation and empowerment of groups of people that have been historically excluded and discriminated against, it would be important to include someone who has an Asian American perspective as a member of the commission.

What I'm trying to say is that we need to reform the Commission on Immigration Reform. I'm not saying that we must have an Asian American on the Commission, but there must be a person with an Asian American perspective; someone who has a proven track record with civil rights and immigrant rights. This prospective member should also have a history of representing people who are from Asia and defending Asians' rights to equal opportunity. Such a person would press forward a policy voice that would include the interests and concerns of Asian Americans. A commission with an Asian American perspective will have a much broader impact on the future of diversity than will a lottery.

⁷⁴ M. Ghazanfar Ali Khan, *Green Card Lottery Requirements Clarified*, MONEYCLIPS, May 25, 1994 (U.S. Consul to Saudi Arabia Joseph B. Nowell stated that 6,837 visas were earmarked for the Asian region.); Anis Ahmed, *Bangladeshis Flock to Enter Lottery for U.S. Visa*, ROCKY MOUNTAIN NEWS, June 19, 1994, at A2 (U.S. Embassy in Bangladesh quoted as saying the total admitted from the continent of Asia will be fewer than 7,000).

⁷⁵ Immigration Act of 1990, Pub. L. No. 101-649 § 141, 104 Stat. 4978, 5002 (1990).

And don't forget that the Commission has no binding authority.⁷⁶ It is not making law or settling cases. It's just a policy voice. But as I said earlier, to overcome that legacy of past discrimination of Asian Americans, we need access and representation on the Commission in a way to make sure that our voice is heard. And unless the 1990 Act is amended to expand the Commission to include someone with an Asian American perspective, I do not think that diversity will be really meaningful in our immigration laws at this point in time.

BENSON: To conclude our formal presentation portion of this panel is Professor Peter Schuck of Yale Law School who will talk about the conflagration of two mighty forces: The force of immigration and the interests of civil rights in our country. Most people who are immigration advocates share and believe in a civil rights philosophy and share many values with the traditional Civil Rights Movement. Professor Schuck is going to explore where these two philosophies might come in conflict.

PETER H. SCHUCK: Whenever I participate in a symposium on this subject, I'm reminded of an apocryphal story that many of you have heard in which Chief Sitting Bull is asked, "What went wrong? What is it that you wish you had done differently?" And Sitting Bull says to the questioner, "We should have paid more attention to our immigration policy." I think that when history is written, symposia like this will be praised for having paid attention to our feelings about diversity, and the policies that we have used to institutionalize some conception of appropriate diversity.

Diversity in immigration has many different effects; sociological, economic, cultural, effects on neighborhood formation and stability, religion, and so forth. I want to emphasize one particular effect of diversity, and of immigration diversity in particular—the effect on our politics. In America, this means an emphasis on our ethnic and racial group politics.

There are two contextual features of group politics that I want

⁷⁶ *Id.* § 141(b) (directing that the functions of the Commission are to review, evaluate and recommend to Congress changes that should be made with respect to legal immigration).

to highlight. The first is the conflicts between natives and immigrants, and among immigrant groups. This is a common problem in American history; indeed it is a permanent feature of it.⁷⁷ This goes back to Columbus, to which Chief Sitting Bull's comment certainly testifies. His comment overlooks the extraordinary violence that Native American groups visited on each other,⁷⁸ while calling attention to that which was visited upon them by white settlers.

The second contextual feature I want to emphasize is that the problem we are discussing today is a universal one. It is not in any way peculiar to the United States. I recommend to you a book by Donald Horowitz, a political scientist and lawyer at Duke University, which was published seven or eight years ago and is entitled *Ethnic Groups in Conflict*.⁷⁹ In this book, the author explores how many other cultures manage diversity in other parts of the world. And we find when we read Horowitz, and indeed when we read the front pages of our newspapers on any given day, that this problem afflicts virtually every society on earth, or at least every society that has been hospitable to immigration. But in the United States, it seems to me that the fluid, dynamic character of our society and of our politics has given a special shape to the politics of group conflict. This is what I want to emphasize today.

I also want to make five preliminary distinctions that will help to inform this discussion. The first is a distinction between diversity *among* groups, which I think is primarily what we've been talking about so far, and diversity *within* groups. Which of the many attributes that we possess are the attributes by which we consider a group of people to be diverse? Is it our skin color? Is it our economic class? Is it our set of values? Is it our occupational structure? Our family life? What is it that makes us diverse? This is a very hard question. We should, when using the term diversity, consider the various ways in which it might be employed.

⁷⁷ See Shlomo Maital, *Out of the Melting Pot Into the Fire; Economic Impact of Immigrants; Global Reach*, ACROSS THE BOARD, Sept. 1993, at 59 (citing studies of noted Harvard sociologist Stanley Lieberman where he observed that "each wave of immigrants generated conflict . . . as 'natives' resisted the encroaching newcomers").

⁷⁸ See, e.g., Paul W. Valentine, *Hollywood's Indians: Are We Dancing With Myths?*, WASH. POST, Mar. 31, 1993, at B5.

⁷⁹ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (1985).

A second distinction is between legal immigration and illegal immigration. Indeed, within each of those categories there are important distinctions to be drawn. For example, within the illegal alien category, the distinction between those who enter illegally, and those who are admitted to the United States legally but then become illegal by virtue of their overstays, is important in thinking coherently about immigration policy.

Within the category of legal immigration, we need to distinguish among the four main streams of legal immigration—family unification, employment-related immigration, so called "diversity" admissions, and human rights-related immigration. I think some of the generalizations being made today should be tailored to those different categories.

The third basic distinction that I want to make is between the short-term and long-term effects of immigration and diversity. Many of the problems associated with group conflict today are problems that will not disappear even in the long term, as my historical comment suggests, but will mutate over time. I fear, and a number of speakers have called attention to this, that we are focusing too much on the headlines and the conflagrations that occur at any particular time, without taking a longer view. By taking a longer view, we would recognize that these kinds of conflicts have occurred throughout American history, and have by and large been satisfactorily resolved, at least in ways that are preferable to the resolutions in most other multi-ethnic societies.

The fourth distinction that I want to draw, related to the one just mentioned, is between the high visibility and low visibility effects of immigration and diversity. It seems to me that the low visibility effects of immigration and diversity are much more important, especially in the long term, than the high visibility effects—the headlines and the sound bytes which capture our immediate attention. I think that the long-term, low visibility effects of immigration and diversity are highly positive and extraordinarily beneficial to American society, even though some of the more immediate, high visibility effects may seem quite damaging to it.

The last distinction I want to draw is between the various levels of government that are affected by immigration and diversity. Here we have what might be called the mismatch problem, where the fact that those who gain the benefits of immigration in terms of fiscal

revenues are often not those who pay the costs of immigration. This seems to me to be the kind of political and policy problem that we really can do something about. I believe that the federal government has been derelict by failing to address the special burdens that have been imposed on some local areas by reason of our immigration policy, regardless of whether one favors the immigration policy or not. Whether one is an expansionist or a restrictionist, there are some important claims arising regionally and locally to which the federal government has been indifferent.

Now, I want to focus on four changes that have been caused, or at least accelerated, by immigration and that have shaped the nature of American diversity and group politics. The first is demographic, the second is legal, the third is socio-economic and the fourth is ideological. Together they appear to constitute a major shift in American political dynamics.

Beginning with demography, we should recognize that in terms of legal immigration policy, we are now experiencing the highest levels of immigration since the first decade of this century. Over 900,000 legal immigrants were admitted in 1993⁸⁰—by historical standards an extraordinarily high level of immigration. However, if one looks at the percentage of our population that is represented by foreign-born people, it turns out that it is not particularly high by historical standards,⁸¹ nor is it even particularly high in comparison to immigration levels of some other post-industrial societies like Canada and France.⁸² The percentage of foreign-born in the United States population today is about eight percent.⁸³ It has been increasing rapidly since 1988,⁸⁴ but it still is not nearly at the fourteen

⁸⁰ STATISTICAL YEARBOOK, *supra* note 6, at 17.

⁸¹ For example, there were about 9,000,000 legal immigrants admitted to the United States during the period 1901-1910. STATISTICAL ABSTRACT, *supra* note 31, at 10.

⁸² The number of foreign-born people in France has been as high as 11% of the population. Sanford Levinson, *Constituting Communities Through Words That Bind: Reflections on Loyalty Oaths*, 84 MICH. L. REV. 1440, 1455 n.57 (1986).

⁸³ STATISTICAL ABSTRACT, *supra* note 31, at 52.

⁸⁴ IMMIGRATION & NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1993 25 (1994).

percent level that prevailed around the turn of the century.⁸⁵

If we add illegal immigration, then we have to recognize that we are now experiencing probably the highest levels of total immigration in American history; more than ten million new immigrants were added to the population during the 1980s.⁸⁶ In the future, we can expect an increase of more than one million new residents, both legal and illegal each year.⁸⁷

Now, all of this is relevant to politics because in the United States, demography is political destiny. And the important political fact to which I wish to call attention—and it is an extremely sensitive fact that we need to think about—is the extent to which this demographic shift has disadvantaged African Americans relative to other ethnic groups, and the effect of that change on group politics.

The population of Asians in the United States increased by about 107% during the 1980s,⁸⁸ Hispanics increased in population by about fifty-three percent,⁸⁹ but the population of African Americans increased by only thirteen percent during this same period.⁹⁰ Moreover, the newer immigrant groups (and I do not mean to suggest that African Americans were immigrants in the same sense) to which I refer, also have a higher fertility rate,⁹¹ so that the long-term prospects of population increase of these groups will continue to be greater than that for African Americans. On the other hand—this is directed at Dan Stein who may, and at other places has, emphasized

⁸⁵ See Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 89 (1984).

⁸⁶ See Jay S. Marks, Comment, *An Economic Analysis of Agency Behavior: INS Prosecutions Under the Immigration Reform and Control Act of 1986*, 5 ADMIN. L.J. 127, 157 (1991) (citing United States Census figures reporting that 6,000,000 legal immigrants entered the country and RAND/Urban Institute figures reporting that between 4,000,000 and 10,000,000 illegal immigrants entered the country in the 1980s).

⁸⁷ See MICHAEL FIX & JEFFREY S. PASSEL, IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 22 (Urban Institute, May, 1994).

⁸⁸ See STATISTICAL ABSTRACT, *supra* note 31, at 14.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See Peter H. Schuck, *Immigration Law and Policy in the 1990's*, 7 YALE L. & POL'Y REV. 1, 2 (1989) (citing *Study Sees Shift in U.S. Population*, N.Y. TIMES, July 19, 1983, at A10); Gary B. Melton, *Children, Families, and the Courts in the Twenty-first Century*, 66 S. CAL. L. REV. 1993, 2013-14 (1993)).

this demographic fact—the fertility rates of newly-arrived groups tend to decline quite rapidly once they settle in American society,⁹² so that their fertility rates come to approximate those of the native population.⁹³ Here, the distinction between short-term and long-term effects is very important.

Moreover, the immigrant groups relevant to African Americans have, at least in the short term, been far more concentrated residentially. They deconcentrate more rapidly in the long run because the level of housing discrimination that they experience seems to be less than that experienced by African Americans.⁹⁴ But in the short term, the political effect of this residential concentration is very great because it creates important opportunities for political mobilization and representation.

Moving from demography to law, there are a number of changes over the last ten or fifteen years that have strongly favored immigrant groups that are competing with African Americans for political influence. First, the Immigration Reform and Control Act⁹⁵ and the Immigration Act of 1990⁹⁶ created and strengthened the anti-discrimination provisions that are designed to protect aliens.⁹⁷ Second, and perhaps more importantly, the courts during the 1980s in a variety of decisions and immigration contexts, in both statutory and constitutional cases, made it a lot easier than it had been before 1980 for aliens to enter, remain, work, resist deportation, and raise

⁹² See Frederick G. Whelan, *Principles of U.S. Immigration Policy*, 44 U. PITT. L. REV. 447, 466 (1983) (citing SELECT COMMISSION ON IMMIGRATION & REFUGEE POLICY, STAFF REPORT, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST (1981)).

⁹³ *Id.*

⁹⁴ See John C. Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573, 1576 (1993) (citing Nancy A. Denton & Douglas S. Massey, *Residential Segregation of Blacks, Hispanics, and Asians by Socioeconomic Status and Generation*, 69 SOC. SCI. Q. 797, 807 (1988)).

⁹⁵ Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 5, 7, 8, 18, 29, 30, 40, and 42 U.S.C. (1988)).

⁹⁶ Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended in scattered sections of 8 U.S.C. (Supp. IV 1992)).

⁹⁷ See Peter H. Schuck & Theodore H. Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979-1990*, 45 STAN. L. REV. 115, 116 n.2 (1992) (discussing the amnesty provisions of IRCA and the 1990 Act's provisions for increasing the number of legal admissions to the United States).

families in the United States.⁹⁸

The law of affirmative action changed a great deal over the last ten years in ways that have tended to disadvantage African Americans compared to immigrant groups. For example, in *City of Richmond v. J.A. Croson Co.*,⁹⁹ the United States Supreme Court made it more difficult for African Americans to establish and strengthen affirmative action programs at the local level.¹⁰⁰ At the same time, in litigation under the Voting Rights Act of 1965, the ability of ethnic groups to use affirmative action in the design of congressional districts was increasing.¹⁰¹ Affirmative action in this context has been encouraged in ways that, in the long run, are going to create greater difficulties for African Americans, vis-a-vis other ethnic groups, which are now beginning to have populations concentrated and numerous enough to demand their own representation in legislatures.

The third set of changes that I want to mention concerns socioeconomic developments. These changes have exacerbated in important ways the competition between African Americans and other groups. In the area of job competition, the perception has been—although the reality may be something else—that immigrant groups have taken jobs away from low income Americans in general and African Americans in particular.¹⁰² Not all economists who have

⁹⁸ See *id.* at 117 (outlining "fundamental changes" in constitutional and administrative law from an exclusionary to a more pro-alien focus).

⁹⁹ 488 U.S. 469 (1989).

¹⁰⁰ *Id.* at 498, 500 (holding that affirmative action programs based upon race are inherently suspect and that they must be justified by specific findings of past racial discrimination).

¹⁰¹ See generally *United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 162 (1977) (holding constitutional so-called "safe districting," which ensures that certain districts be comprised of a majority of voters from the racial minority); Tyler J. Kandel, Note, *The "Safe" Danger: Remedies Under the Amended Voting Rights Act of 1965*, 12 N.Y.L. SCH. J. HUM. RTS. (forthcoming 1995) (discussing the 1982 amendments to the Voting Rights Act of 1965 and noting that the number of majority-black districts which were intentionally created for the purpose of electing minority candidates has been increasing).

¹⁰² See Alice Choi, *A Closer Look at the Conflict Between the African American and the Korean American Communities in South Central Los Angeles*, 1 ASIAN AM. PAC. IS. L.J. 69 (1993) (discussing resentment felt by African Americans towards immigrants as a result of the belief that immigrants increase competition for "scarce economic

studied this question very closely conclude that this is in fact true.¹⁰³ There are many different studies, and I'm sure Dan Stein could cite some, which purport to establish these effects, but in my view, the economics are rather more complex. But the important political fact is that perceptions about job displacement matter, whatever the economists may say.

The perception of competition over public benefits between African Americans and immigrant groups has also increased.¹⁰⁴ In one respect, one might think of this as a zero sum game in which the more one group gets, the less other groups get. But it seems to me that the competition is actually worse than that. It is a negative sum game because the more claims that are made on the welfare state, the more resistant the American public seems to be to providing social welfare benefits at all. In the end, as a result of these competing claims, there may be less money to go around than there was before. Again, this situation is very much in flux. We do not have the answer to this problem yet, but the dynamic needs to be emphasized.

Just as an example, the *New York Times* ran an article a couple of days ago that explored the differences among various groups with respect to preferences for day care.¹⁰⁵ The basic point of the article was that Hispanic groups tend to be much more interested in *family* day care than African Americans or other groups at the same income level. Therefore, the position of Hispanics with respect to some of the elements of any welfare reform proposal might be very different than the position of those who might otherwise be allied with them on this set of welfare policy questions.¹⁰⁶

There has also been a great deal of differentiation *within* groups. I've been talking up to now about differentiation *among* groups. But within groups, there has been a quite dramatic "middle

resources").

¹⁰³ See Wright, *supra* note 8, at 1282 (quoting GEORGE J. BORJAS, FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY 81 (1990)).

¹⁰⁴ See Elaine M. Whitford, Note, Immigration and Naturalization Service v. Cardoza-Fansecas: *The Last Word on the Standard of Proof For Asylum Proceedings*, 13 N.C. J. INT'L L. & COM. REG. 171 (1988).

¹⁰⁵ Susan Chira, *Hispanic Families Use Alternatives to Day Care, Study Finds*, N.Y. TIMES, Apr. 6, 1994, at A19.

¹⁰⁶ *Id.*

classification," as one might put it, as various groups have become more economically class differentiated within the group itself. This has been quite dramatic among African Americans. The rather extraordinary growth of the black middle class over the last twenty-five years¹⁰⁷ has had an important impact on political attitudes, policy preferences, and the like.

It makes less and less sense to speak in terms of groups as if they were monoliths. In fact, they are differentiating very rapidly. This differentiation is occurring among African Americans and among other ethnic groups. This affects political coalition building, the solidarity within groups, and the ability of group leaders to represent accurately the preferences of their members, which are often changing more rapidly than the views of the leaders of these groups.

The last point I want to make about this socioeconomic differentiation is that one of the important elements of the civil rights agenda of the most influential African American organizations has been the claim that affirmative action ought to be implemented in a variety of policy realms. It seems to me that the claim of affirmative action has called greater attention, and imparts a greater political salience, to questions of group identity, group desert, and group performance. These kinds of emphases have increasingly worked to the disadvantage of African Americans relative to other groups. There has been a kind of economic and social leapfrogging by some immigrant groups past African Americans in ways that make the claims of affirmative action in some respects more difficult to justify and to sustain politically. If the newer, non-white immigrant groups have succeeded in rising without the need for affirmative action despite serious disadvantages, the public increasingly asks why can't African Americans.

The last kind of change I want to mention has to do with ideology. By ideology I mean the stories that we tell about ourselves. The immigration stories and the myths about immigration are undermining, over the long term, many of the claims of African

¹⁰⁷ See Michele L. Norris, *A Shift to Middle Class: Black Influx Boosting P.G. Economy, Politics*, WASH. POST, Mar. 3, 1991, at A1; Sam Fulwood III, *Trend / Black Entrepreneurs; Business Owners Narrow Gap With Majority-Owned Firms*, L.A. TIMES, Sept. 18, 1990, at A5.

Americans as a group, especially in light of group comparisons. There is a normative consensus in the United States that all groups that call attention to themselves as groups must—here I use a deliberately provocative word—"perform" in ways that satisfy other groups, particularly the politically dominant groups. Affirmative action claims, by making these sorts of group behaviors and characterizations more salient, have made it more difficult for African Americans to sustain these arguments when other ethnic groups which have their own claims to histories of injustice, of struggle, of discrimination compare themselves to African Americans, as there will be increasingly political incentives to do. This can be a very unpleasant kind of politics. It is not something that one ought to approach with any feeling of comfort, but discomfort in this debate is increasing. We are simply too genteel to discuss it openly. I am convinced, however, that we need to. I think that this differential group experience is perhaps the most important reality of diversity, its most important consequence for the future of American ethnic group politics. We need to begin discussing it openly and honestly, and I hope that this symposium contributes to this debate.

BENSON: You might be thinking about some questions you'd like to ask the panel. However, I have prepared and sent to the panelists in advance a few questions that I thought we might address which might not have been covered in their presentations. And I'd like to ask Dan if he would start first.

FAIR has said that its goal is to limit immigration. Does FAIR take a position on enforcement of immigration laws? Up to now we've talked primarily about admissions. I think that there are many advocate groups that would say that the enforcement of immigration laws is disproportionate against people of color, primarily Haitians and people from Mexico or Central America.¹⁰⁸

¹⁰⁸ See Elizabeth K. Harris, Comment, *Economic Refugees: Unprotected in the United States by Virtue of an Inaccurate Label*, 9 AM. U. J. INT'L L. & POL'Y 269, 277 (1993) (arguing that the United States has been "slow" to extend offers of safety to victims of political oppression in El Salvador, Guatemala, and Haiti because in fiscal years 1980 and 1991, only 380 Salvadorans, 51 Guatemalans, and 20 Haitians were admitted as refugees (citing U.S. IMMIGRATION & NATURALIZATION SERVICE, STATISTICS DIVISION, NONIMMIGRANTS ADMITTED BY COUNTRY OF CITIZENSHIP AND SELECTED CLASS OF ADMISSION 1992)).

Does FAIR have a position on enforcement?

STEIN: Well, actually we have a position on any subject you can think of. And I would say we get intimately involved in virtually every issue that pertains to the mechanics of immigration enforcement.¹⁰⁹ We think that there is universally an abysmal absence of effective enforcement all across the board at the Immigration and Naturalization Service. We believe that the laws should be enforced even-handedly and, of course, the vast majority of these newcomers being inadmissible, we don't really think there is a need for any significant level of immigration at all. But we have always taken the position that with regard to the actual enforcement practices of the INS, when there are situations in which regulations appear to be interpreted in a discriminatory manner, or if there appears to be legislation which creates glaring inequities, these are objectionable features. But our position usually comes out opposite to what yours might be, and opposes preferences that appear to be promoting one group over another.

I'm marvelling to hear all the objections now to the new diversity lottery, which was designed primarily by Senator Kennedy and his staff.¹¹⁰ We were the only organization which has repeatedly and publicly spoken out in opposition to the lottery. We have testified repeatedly before Congress in opposition to these lotteries as being in many cases a thinly-disguised preference program primarily for Irish immigrants.¹¹¹ And in fact I think I was just quoted in USA Today on Wednesday again objecting to the program.¹¹² What I'm wondering, is if all these other organizations have such a great relationship with Senator Kennedy and we don't, why is it that they weren't able to stop it, and why were we the only ones who objected

¹⁰⁹ See, e.g., FEDERATION OF IMMIGRATION REFORM, TEN STEPS TO SECURING AMERICA'S BORDERS (discussing illegal immigration along the border between the United States and Mexico).

¹¹⁰ Patricia I.F. Sebben, Note, *U.S. Immigration Law, Irish Immigration and Diversity: Céad Míle Fáille (A Thousand Times Welcome)?*, 6 GEO. IMMIGR. L.J. 745, 762 (1992).

¹¹¹ *Id.*

¹¹² Maria Puente, *Lotto Fever: 55,000 Chances of a Lifetime in the USA / This Year, Computers Will Decide*, USA TODAY, Apr. 6, 1994, at A10.

to it as a new form of national origin preference?

BENSON: Does someone on the panel want to explore that?

MARK: Well, the only thing I can say is that, fundamentally, the lottery does, by implication, favor people from Europe and Africa. Additionally, this favoritism is thinly disguised in the 1986 law, the Immigration Reform and Control Act, and the language in the Immigration Act of 1990 which seems to be very obscure—meaning that it refers back to the Act itself. It does favor certain people from Europe, primarily Ireland. As some of you may know, Northern Ireland is considered a separate foreign state for purposes of administering the diversity program, whereas every other colony or dependent area of a foreign state is treated as part of that state.¹¹³ So there may be some truth to FAIR's position.

But how do you address the issue of immigration by those who don't have family here? In principle, I don't have a problem, as I said in my presentation, with increasing numbers of people immigrating from certain parts of the world that don't otherwise have access to this country. But I do not want to see this done at the expense of other people in other parts of the world. I think there could be a more equitable system designed for diversity. I'm not saying it's good or bad—it's just another approach. It doesn't necessarily meet our goals for family reunification, although it provides some people, a small number of people, the opportunity for family reunification later on. At the same time, it doesn't really fine-tune our objective of improving skills for certain kinds of job skills or making our system more fine-tuned to correct some of the areas where there is mismatching of skills. I think that's the way I would look at it.

But as a whole, there is a special interest, perhaps. But again, where is the opportunity for people to come to this country? Maybe we need to re-examine our laws and the definitions to provide an expanded definition for family reunification, to bring relatives here who have extended families as opposed to the traditional nuclear family.

¹¹³ 8 U.S.C. § 1153(c)(1)(F) (Supp. II 1990).

SCHUCK: I just want to make one rather peripheral, but it seems to me important and interesting, point about the way these lotteries work. This is the distinction between the law in the books and the law in action. The lottery program has primarily benefitted groups that enjoy not only the advantage of having been ethnic compatriots of Senator Kennedy, but also of access to lawyers who can organize them in ways that vastly increase their statistical probability of benefitting from the lottery. It's become something of a lawyer's game. We should recognize when we create programs like this, however benign our motives may be, that those who are already well-equipped with legal representatives as well as lobbyists are likely to benefit the most from these programs.

BENSON: Do people in the audience have any questions?

AUDIENCE MEMBER: My first question is directed to Mr. Stein. I believe you made the comment that historically, in the nineteenth century and even before, American immigration policy was restrictive. My understanding of American history is just the opposite. Maybe I misunderstood you. I believe you said there were restrictions that favored Anglo-Saxons, but that is not the case. It was an open immigration policy, taken advantage of by succeeding waves of people who came to the United States for political or economic reasons.

My other comment is that Professor Schuck, in his discussion of the African Americans and how they have fared in the United States, has, I think, ignored an important distinction that is usually ignored. This distinction is that African Americans of Caribbean origin have done very well economically in this country. This has to be discussed when we talk about African Americans.

My third point is that this conference is supposed to be addressed to the twenty-first century. And I think that we have ignored the fact that the diversity lotteries place tremendous emphasis on the educational level of those who can take advantage of winning in the lottery. If an alien is fortunate enough to be one of the persons selected in the lottery, he then has to prove that he has either the equivalent of a high school education, or has skills that require two years of training to acquire and has, in effect, attained that level of

skill.¹¹⁴ It is unmistakable to me that this is the trend in American immigration law. It started with the last revision of the Act, and it is what we are going to see more of in the twenty-first century. This country, as I see it, is no longer going to welcome people simply because their brothers, sisters, or parents are permanent residents or American citizens. In response to global competition, we are probably becoming more aware as a nation that the green card is a ticket to the most valuable resource of all. It is a way of attracting people here with high levels of education and skills. In the long run, this will determine the economic destiny of the United States. Since we can attract virtually all of these people that we want, it will mean that the United States will be able to retain its economically dominant position in relation to other countries. And I would not be surprised that if ten or twenty years from now, it would be impossible for an alien to immigrate to the United States without a high level of education or skill.

BENSON: Dan, do you want to respond first?

STEIN: I don't think I said immigration was restrictive starting in 1885, and was progressively more restrictive thereafter. But it's important to recognize that the colonies had very discriminatory laws.¹¹⁵ Many colonial charters denied admission to Catholics and Quakers.¹¹⁶ People from France or Spain or any other colonial power could not immigrate to the colonies. They were protecting themselves against competing colonial powers. Until the Supreme Court established immigration as a plenary power in the late nineteenth century,¹¹⁷ many of the States had an array of laws regarding citizenship, naturalization, residency, property ownership, and a whole range of things which were de facto immigration restrictions that made it clear that if you were a certain kind of person you were not going to have a very easy time of it. So I think to say that immigration was unrestricted prior to 1875 is an

¹¹⁴ 8 U.S.C. § 1153(c)(2) (Supp. II 1990).

¹¹⁵ See E.P. HUTCHINSON, *LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965* 388-96 (1981).

¹¹⁶ *Id.* at 390.

¹¹⁷ *Lem Moon Sing v. United States*, 158 U.S. 538, 543 (1895).

oversimplification of history. This is one of the greatest problems with immigration history. People tend to evaluate the various immigration interests, projections, and decisions not within the context of the facts as they existed, but rather from the hindsight of the present. I do agree with you that we are moving towards a more refined immigration policy, but I don't agree that this country's entire competitive position resides on skimming the cream off the rest of the world, because if it does, we are in big trouble.

MARK: Relatively speaking, our immigration laws established an open door policy for some groups of people. But as I said in my presentation, it really consisted of discriminatory exclusionary practices and policies directed against Asians. Historically, this is a proven fact. Also, as a sidelight, you should be aware that during that period prior to the 1880s, people used a variety of languages in public discourse, whether German or other languages. Furthermore, non-citizen voting existed in many of the jurisdictions.¹¹⁸ Those laws were not repealed until 1926, the last one was in Arkansas.¹¹⁹ So the contradictory kinds of things going on, at least from an Asian American perspective, is an indication that certain people were more welcome than others. So I would say in a relative policy sense, it was open-door compared to the restrictions that were enacted against Asians.

I see some of the development questions that you raised. I think that they are clearly important. Employment based visas that are obtained by people with special skills or higher educational value are intended to fine-tune the population, and to place those people within specified positions here in the United States. If you look at

¹¹⁸ See Jamin B. Raskin, *Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1418-19 (1993) (discussing *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 177 (1874) in which the Court noted that aliens who stated that they intended to become citizens were able to vote, under certain circumstances, in Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas).

¹¹⁹ See *id.* at 1416 (citing Leon E. Aylsworth, *The Passing of Alien Suffrage*, 25 AM. POL. SCI. REV. 114, 115-16 (1931)).

the data, many engineers¹²⁰ and nurses are from the Philippines or one of the Asian countries.¹²¹ They came to fill positions here that went unfilled, but they came through the family reunification system. They didn't enter on employment-based visas. So whatever the market forces or whatever the policy considerations behind family reunification, they also supplemented it and fulfill a need here. So I'm not saying the only way to do it is family reunification. I would say it's not quite that simple. I think this is the direction of the Immigration Service today. It's going to look for higher skills in more of an elite, well-educated class of people. At the same time, we are going through a global integration of economy, clearly a regional integration of economy, especially when you look at NAFTA.¹²² Whatever your positions are, you really have a pyramid effect of people who are well educated, primarily North Americans on top, and on the bottom, Latin Americans. But we're all part of the economy. The reality is that we all are interdependent, whether it's regionally or globally.

My point is this: The internationalization of capital and human resources, and the development of human resources will probably be the primary questions in the next century, regardless of nationality. We have to fine-tune our immigration laws to allow for the flow of human resources and human capital, both from the unskilled and the skilled levels. Otherwise, we are going to have shortages in certain areas. Obviously, I'm not here to predict what the shortages will be, but there are shortages and it's primarily due to the mismatching of skills. So if we're going to fine-tune the working population on the

¹²⁰ See generally Fox Butterfield, *Why Asians Are Going to the Head of the Class*, N.Y. TIMES, Aug. 3, 1986, § 12, at 18 (discussing the fact that there are so many Asians in college studying engineering that they are being rejected on the basis of their nationality).

¹²¹ See Roberto Suro, *Your Tired, Your Poor, Your Masses Yearning to be With Relatives*, N.Y. TIMES, Jan. 6, 1991, § 4, at 6.

¹²² The North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 296-456, 612-794, 33 I.L.M. 649-57, 663-64, 671-80 (1994). NAFTA was created to "gradually phase out tariffs between Canada, Mexico and the U.S." and "create a large open regional market." *Nafta's True Importance*, N.Y. TIMES, Nov. 14, 1993, § 4, at 16. The Agreement ran into opposition based upon the fear that it would provide incentive for employers to relocate facilities, and thus jobs, to Mexico in order to take advantage of lower wages. *Id.*

employment side, we need to think about the numbers of people that we need and at the same time facilitate that flow of human resources. Of course, the big attraction for the United States currently, and probably into the next century, for human resources and employment, is that we have the most outstanding university and college system in the world. We may be not so great at the elementary or secondary levels, but people of every nation, particularly the Asian countries, want to send their children here to be educated.¹²³ Not all of them stay, some of them go back. Again you have further integration of the economy. You have skilled people who work for international corporations and private sector businesses operating without true national borders. It is not a zero sum game.

Regarding human resources, and particularly if you look at many of the neighborhoods in New York, where the loss of manufacturing jobs and perhaps a fleeing of the more educated people over the past twenty years to the suburbs, those gaps were met by immigrants from all over the world. There is data at the Department of City Planning that indicates that the tax base and job creation has increased dramatically due to the increase in population of foreign-born individuals.¹²⁴ If you bring people in, they actually expand your economy and tax base, bringing revenue to New York. Most of those tax revenues are coming from people who are immigrants.

So there are very positive contributions being made by immigrants and we need to recognize that in thinking through our policy discussions. I'm not so optimistic that you can fine-tune immigration to meet specific shortages. I think that the market is the way it is. Additionally, I think that the illustration that I gave about family reunification as being an avenue to fill some of the open skilled and highly educated positions in our society is an obvious

¹²³ The Asian student population in the United States has increased by 300% since 1980 and comprises 59% of all foreign students in four-year accredited colleges and universities. Michael Hamlin, *The Battle for Brains: Why Asian Students Choose the U.S.*, BUSINESS TIMES, Apr. 20, 1994, at 12.

¹²⁴ See Sam Roberts, *New York City Census Profile Shows Stark Changes in Decade*, N.Y. TIMES, June 22, 1993, at B1. This article cites a New York City Planning Commission Census which reveals that from 1980-1990, the foreign-born population in New York City grew by 24.7%, while households receiving public assistance decreased by 8.5%. *Id.* During that period, the median household income (adjusted) increased by 28.4%. *Id.*

example, even if the primary purpose is family reunification, where we absolutely need immigrants.

BENSON: One of the penalties of trying to have diversity in thought, presentation, and panel members is that there is never enough time. I'm going to have to ask Peter Schuck to make the last comment, so that we will then leave time for our last panel.

SCHUCK: I just want to make two quick responses to several good points. The development point has been addressed at length. On the historical point, I would direct your attention to a very recent article by Gerald Neuman in the *Columbia Law Review*,¹²⁵ in which he reviews the pre-1870s restrictions under state law that affected the flow of immigrants, mostly under the rubric of public health restrictions, but which also enjoyed the support of federal laws. It provides a kind of interesting perspective on your question.

On your second point about the differentiation within the black community, I couldn't agree more. In a recently published article on which I drew for the brief remarks today, I wrote about this already. But I just want to read a passage from it because I think it develops the point a little bit more.

Rapid growth of the black middle class is one of the most striking features of American social change since World War II. Among young intact families, blacks have almost gained parity with whites in income (although not in wealth), a remarkable achievement given their vastly inferior position only a short time ago. And, though still vulnerable to racial discrimination (most notably in housing), many blacks have acquired new class interests that separate them from those they left behind. These upwardly mobile families and individuals, like their white class counterparts but unlike many lower income blacks, have important economic stakes in increased immigration, which increases social wealth without

¹²⁵ Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833 (1993).

threatening their own jobs. Indeed, immigration probably *increases* their job opportunities on balance, especially since they disproportionately are public employees who provide a variety of education, health, welfare, and other social services to immigrants. Some black immigrant groups share the black middle class perspective. West Indians and, to a lesser extent, Haitians tend to be more optimistic than comparable American-born blacks and have made relatively rapid economic progress in the United States.¹²⁶

BENSON: Thank you, panelists, very much, and so ends a very mild fistfight for the afternoon.

¹²⁶ Peter H. Schuck, *The New Immigration and the Old Civil Rights*, AM. PROSPECT, Fall 1993, at 102, 106-07.